SYARIKAT TELEKOM MALAYSIA BHD.

v.

BUSINESS CHINESE DIRECTORY SDN. BHD.

SUPREME COURT, KUALA LUMPUR
TAN SRI DATO' HARUN BIN MAHMUD HASHIM SCJ,
DATO' PEH SWEE CHIN SCJ,
TAN SRI DATO' MOHD EUSOFF BIN CHIN SCJ
[CIVIL APPEAL NO. 02-373 OF 1993]
6 MAY 1994

PRACTICE & PROCEDURE: Reception of document into evidence - Document in the Chinese language - Whether there was a requirement that the document must first be translated into the National language before it can be admitted as an exhibit - Consideration of O. 92 r. 1 of the Rules of the High Court 1980 - Whether O. 92 r. 1 is a mandatory provision.

The respondent published a directory in the Chinese language known as the "Malaysian Business Chinese Directory" (the Directory). The appellant sought an injunction to restrain the respondent from printing the Directory on the grounds that the respondent had obtained the information contained in the Directory from telephone directories published by the appellant without first obtaining the permission or authority of the appellant.

The appellant's claim was dismissed with costs on the grounds that the Directory had not been proved to contain the names of telephone subscribers in an alphabetical order and as such did not come within the definition of "telephone directory" under s. 44 of the Telecommunications Amendment Act 1977.

On appeal, the Supreme Court agreed with the finding of the High Court Judge but went on to consider whether the Directory should have been admitted as an exhibit at the hearing in view of the fact that the Directory had not been translated into the National language as required by O. 92 r. 1 of the Rules of the High Court 1980 (RHC 1980).

Held:

[1] O. 92 r. 1 RHC 1980 is a mandatory provision which requires that any document which is not in the National language or in the English language must be translated into the National language before it can be admitted as an exhibit.

[2] The appellant submitted the Directory (a document in Chinese) in evidence without a certified translation of the same in the National language in contravention of O.92 r.1 RHC 1980. In the circumstances the High Court should not have admitted the Directory as an exhibit and without the Directory, there is no evidence to substantiate the appellant's claim.

[3] The learned Judge hearing the case cannot rely on the oral evidence of witnesses alone as to what the contents of the Directory are. It is the primary function and duty of the learned Judge to look at the Directory, and decide, if necessary with the help of experts in the Chinese language and writing, whether the Directory is in fact a telephone directory as defined by the law. In this case it was impossible for the learned Judge to come to any decision, by looking at the Directory, as he himself is unable to understand what it is.

[Appeal dismissed with costs].

[Bahasa Malaysia Translation of Headnote]

AMALAN & PROSEDUR: Penerimaan dokumen sebagai bukti - Dokumen dalam bahasa Cina - Sama ada terdapat keperluan bahawa dokumen mesti diterjemahkan ke dalam Bahasa Kebangsaan sebelum ia boleh diterima sebagai eksibit - Pertimbangan Aturan 92 kaedah 1, Kaedah-kaedah Mahkamah Tinggi 1980 - Sama ada A. 92 k. 1 merupakan syarat mandatori.

Responden telah menerbitkan sebuah buku panduan dalam bahasa Cina yang dikenali sebagai "Buku Panduan Perniagaan Malaysia dalam Bahasa Cina" (Buku Panduan tersebut). Perayu memohon injunksi untuk menghalang responden daripada menerbitkan Buku Panduan tersebut atas alasan bahawa responden telah memperolehi maklumat yang terkandung dalam Buku Panduan tersebut daripada buku-buku panduan telefon yang diterbitkan oleh perayu tanpa terlebih dahulu mendapatkan kebenaran atau keizinan dari perayu.

Tuntutan perayu telah ditolak dengan kos atas alasan bahawa tidak dibuktikan yang Buku Panduan tersebut mengandungi nama-nama pengguna telefon mengikut turutan abjad dan dengan itu ia tidak tergolong dalam definasi "buku panduan telefon" di bawah s. 44 Akta Pindaan Telekomunikasi 1977.

Atas rayuan, Mahkamah Agung telah bersetuju dengan pendapat Hakim Mahkamah Tinggi

tetapi ia menimbangkan sama ada Buku Panduan tersebut patut diterima sebagai ekshibit diperbicaraan memandangkan kepada fakta bahawa Buku Panduan tersebut tidak diterjemahkan ke dalam Bahasa Kebangsaan sebagaimana yang dikehendaki oleh A. 92 k. 1, Kaedah-kaedah Mahkamah Tinggi 1980 (KMT 1980).

Diputuskan:

[1] Aturan 92 k. 1 KMT 1980 merupakan syarat mandatori yang menghendaki bahawa mana-mana dokumen yang tidak tertulis dalam Bahasa Kebangsaan atau Bahasa Inggeris mestilah diterjemahkan ke dalam Bahasa Kebangsaan sebelum ia boleh diterima sebagai eksibit.

[2] Perayu mengemukakan Buku Panduan tersebut (sebuah dokumen dalam Bahasa Cina) sebagai bukti tanpa terjemahannya yang diakui sah dalam Bahasa Kebangsaan dan ini bertentangan dengan A. 92 k. 1 KMT 1980. Dalam hal ini Mahkamah Tinggi sepatutnya tidak menerima Buku Panduan tersebut sebagai eksibit dan tanpa Buku Panduan tersebut, tiada keterangan untuk membuktikan tuntutan perayu.

[3] Hakim bijaksana yang mendengar kes tersebut tidak boleh bergantung semata-mata kepada keterangan lisan saksi sahaja berhubung dengan kandungan Buku Panduan tersebut. Adalah menjadi tugas dan kewajipan utama Hakim yang bijaksana tersebut untuk melihat Buku Panduan tersebut, dan memutuskan, jika perlu dengan bantuan pakar dalam Bahasa and Tulisan Cina, sama ada Buku Panduan tersebut merupakan sebuah buku panduan telefon sebagaimana yang ditakrifkan oleh undang-undang. Dalam kes ini adalah mustahil bagi Hakim yang bijaksana tersebut mencapai sebarang keputusan dengan melihat Buku Panduan tersebut memandangkan beliau sendiri tidak dapat memahaminya.

[Rayuan ditolak dengan kos].

Cases referred to:

Lee Guat Eng v. Tan Lian Kim [1985] 2 MLJ 196 ***(refd)***
Ratnam v. Cumarasamy & Anor [1965] 1 WLR 8, PC ***(refd)***

Legislation referred to:

Rules of the High Court 1980, O. 92 r. 1
Telecommunications Amendment Act 1977, s. 44

For the appellant - C.V. Das (M. Nagarajah and Ken St. James with him); M/s Shook Lin & Bok
For the respondent - Low Hop Bing (Siak Leong Sing with him); M/s Low Hop Bing & Associates

JUDGMENT

Mohd Eusoff Bin Chin SCJ:

We dismissed this appeal on 13 December 1993 and we now give the grounds for doing so.

The appellant alleged that the respondent had compiled, published, printed, distributed and sold telephone directories in the Chinese language entitled "Malaysian Business Chinese Directory", and that the respondent in doing so had obtained or copied substantially from telephone directories published by the appellant without first obtaining the permission or authority of the appellant. The appellant sought an injunction from the Court to restrain the respondent from printing the Chinese telephone directories and for damages to be assessed. On 21 September 1991 the Court granted an interim injunction pending trial. The respondent's application to set aside the interim injunction was rejected by the Court on 23 December 1991. On 25 June 1993, after a full trial, the High Court dismissed the plaintiff's claim with costs. The appellant appealed to the Supreme Court.

What we are mainly concerned with here is whether the book Exh. P7 entitled "Malaysian Business Chinese Directory" is in fact a telephone directory. Under s. 44 of the Telecommunications Amendment Act 1977 a "telephone directory" means "the book containing the alphabetical list of telephone subscribers' names and addresses". What is "alphabetical list" is not defined in the Act. The learned Judge of the High Court in his judgment has held that the "Malaysian Business Chinese Directory" is not a telephone directory because it has not been proved to contain the names of telephone subscribers in an alphabetical order. We agree with his finding on this point.

It was argued by the learned Counsel for the appellant that the impugned directory being in the Chinese language could not be arranged in alphabetical order because Chinese characters do not contain alphabets but depends on the number of strokes, and identification is by counting the number of strokes. He argued that the Court should accept the impugned directory as an exhibit without its having to be translated from Chinese into Bahasa Kebangsaan since

the appellant's Chinese language expert Dr Tang Eng Teik in his evidence stated that it is not possible to translate a Chinese name into romanised Malay writing. This is because when written in Chinese characters, the surname 'Tang' is pronounced as 'Chin' in Hakka, as 'Tan' in Hokkien, as 'Chan' in Cantonese and as 'Teng' in Fuchow.

Lee Sok Peng had, when giving evidence for the respondent, said that the "Malaysian Business Chinese Directory" was written in Mandarin. It was, therefore, submitted by the learned Counsel for the respondent that a translation into Bahasa Kebangsaan could have been made by following only the Mandarin pronunciation. From the appeal record, we note that he had also submitted in the High Court that the impugned directory should not have been admitted in evidence because it had not been translated into Bahasa Kebangsaan as required by O. 92 r. 1 of the Rules of the High Court 1980 which states:

> 1. Any document required for use in pursuance of these rules **shall be** in the national language, and may be accompanied by a translation thereof in the English language:
>
> Provided that any document in the English language may be used as an exhibit, with or without a translation thereof in the national language.

The learned Counsel for the respondent repeated before us his earlier submission in the High Court that the book "Malaysian Business Chinese Directory" should not have been admitted as an exhibit because it had not been translated into the National language. He stressed that O. 92, r. 1 of the Rules of the High Court 1980, uses the word "shall be in the national language" and therefore it is a mandatory requirement.

In this case the book "Malaysian Business Chinese Directory" is in Chinese writing. Witnesses told the Court that it contains a list of businesses and trade names together with their telephone numbers. The learned Judge hearing the case cannot rely on the oral evidence of witnesses alone as to what the contents of the book are. It is the primary function and duty of the learned Judge to look at the book, to satisfy himself what it is, and decide, if necessary with the help of experts in the Chinese language and writing, whether the book is in fact a telephone directory as defined by the law. In this case it is impossible for the learned Judge, by looking at the book, to come to any decision simply because he himself is unable to understand what it is.

We find that O. 92 r. 1 of the Rules of the High Court 1980, is a mandatory provision which requires that any document which is not in the National language or in the English language must be translated into the National language before it can be admitted as an exhibit. Further, it has been held by the Courts that Rules of Court are to be obeyed. Failure to comply with them will lead to chaos in the conduct of litigation. See *Lee Guat Eng v. Tan Lian Kim* [1985] 2 MLJ 196, *Ratnam v. Cumarasamy & Anor* [19651 1 WLR 8, PC.

It is regretted that the well-founded submission of learned Counsel for the respondent went unheeded in the Court below. Secondary i.e. oral evidence of the witnesses about the contents of Ex P7, a document (a book) in Chinese, should not have been considered by the Court below as such evidence would become relevant normally only on the non-availability of Ex P7 as when such non-availability is accounted for in some way. Here Ex P7 was available and the appellant in fact submitted it in evidence without a certified translation of the same in the National language in contravention of O. 92 r. 1 of the Rules of the High Court. The High Court should not have admitted it as an exhibit. Without this book, there is no evidence to substantiate the appellant's claim, and for this reason the appellant's claim must, therefore, fail.

We, therefore, dismissed the appeal with costs.